107 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Northern Natural Gas Company Docket No. RP04-265-000

ORDER CONDITIONALYACCEPTING AND SUSPENDING TARIFF SHEETS AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued May 21, 2004)

1. On April 23, 2004, Northern Natural Gas Company (Northern) filed revised tariff sheets[1] to modify terms and conditions of Rate Schedules FDD, IDD, and PDD.[2] Specifically, Northern proposes to allow shippers to: (1) consolidate multiple FDD agreements into one operating agreement for administrative efficiency; and, (2) transfer account balances between Rate Schedules FDD, IDD, and PDD without incurring injection or withdrawal fees. Northern requests a May 24, 2004, effective date for its tariff sheets.

2. The Commission finds that parties have raised numerous issues and concerns that require further consideration. Accordingly, we conditionally accept and suspend Northern's tariff sheets to become effective on the earlier of October 24, 2004, or the date specified in a future order in this proceeding, and direct staff to convene a technical conference. This order benefits the public by giving parties the opportunity to discuss issues, and gather additional information, related to Northern's proposal.

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[1] Third Revised Sheet No. 136, First Revised Sheet No. 142A, Fifth Revised Sheet No. 145, Original Sheet No. 442B, and Original Sheet No. 442C to its FERC Gas Tariff, Fifth Revised Volume No. 1.

[2] FDD is firm deferred delivery service, IDD is interruptible deferred delivery service, and PDD is preferred deferred delivery service, which is a preferred interruptible service.

I. Details of Filing

3. Northern proposes two changes to its storage provisions. First, it proposes to allow shippers to consolidate multiple FDD service agreements into one operating agreement to reduce shippers' administrative costs since they would be able to nominate and balance under the consolidated agreement. The proposal also reduces Northern's administrative costs since it would reduce the number of transactions processed. Northern states that any consolidated agreement would be executed by only the FDD shipper(s), the consolidated agreement agent, and Northern.

4. Northern adds the consolidation of multiple FDD agreements is possible due to the homogenous nature of FDD service and because provisions of Rate Schedule FDD create a linear relationship between daily injection and withdrawal rights and cycle contract quantities (i.e., the aggregate capacity rights of a 0.25 Bcf agreement and a 0.75 Bcf agreement equals the capacity rights of a 1.0 Bcf agreement).

5. To implement this proposal, Northern includes a new section G to Rate Schedule FDD that generally states: (1) shippers may agree to consolidate FDD service agreements into a single agreement administered by an agent for nominating, scheduling, balancing, and invoicing; (2) only the agent would nominate under the consolidated FDD agreement; (3) neither the shipper nor agent could nominate under the individual FDD agreements; (4) a shipper must provide Northern with written notice 30 days prior to the injection season to discontinue its participation in a consolidated agreement or to reinstate participation in one; and, (5) entering into a consolidated agreement does not relieve a shipper of its obligation under its individual FDD Service Agreement of balancing and paying invoices. Northern also includes in its tariff a pro forma FDD Consolidation Agreement on Original Sheet Nos. 442B and 442C.

6. Additionally, Northern proposes to allow shippers to transfer account balances between FDD, IDD, and PDD service without incurring any incremental injection or withdrawal fees. Northern notes that its current tariff allows shippers to transfer title between different shippers' accounts if both accounts are within the same rate schedule. Northern expands this right by permitting shippers to transfer account balances between different shippers' accounts regardless of each shipper's deferred delivery rate schedule. Northern contends this proposal would provide shippers additional flexibility to manage deferred delivery account balances and would increase a shipper's ability to trade inventory that may occur as a result of Northern's recently implemented imbalance-to-storage provisions.[3]

[3] By order issued October 31, 2003, in Docket No. RP03-398-000 (105 FERC ¶ 61,172 (2003)), the Commission conditionally accepted Northern's imbalance-to-storage proposal.

7. To implement this proposal, Northern revises section F of Rate Schedule FDD and section 2 of Rate Schedules PDD and IDD to clarify that shippers may transfer account balances between the three storage services and that Northern will not charge shippers an injection or withdrawal fee, or a transportation fee if shippers' accounts are located at the same storage point. Northern notes that it would charge a transportation fee (but no injection or withdrawal fee) if shippers transfer account balances between storage points.

II. Notice

8. The Commission issued notice of Northern's filing on April 27, 2004. Interventions, comments, and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Pursuant to rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. U.S. Energy Services, Inc., and MidAmerican Energy Company filed comments in support of Northern's proposal. The Northern Municipal Distributors Group and the Midwest Region Gas Task Force (NMDG/MRGTF) filed adverse comments. Virginia Power Energy Marketing, Inc. (VPEM), and the Large Local Distribution Company coalition (Coalition) filed protests. Northern filed an answer to the comments on May 11, 2004.[4] Parties' concerns and Northern's answer are summarized and discussed below.

III. Discussion

A. Consolidating FDD Agreements

9. Parties raise numerous concerns and questions regarding Northern's proposal to allow shippers to consolidate FDD agreements. VPEM notes that the Commission approved the consolidation of firm transportation agreements for single shippers in the past,[5] but contends this proposal differs since Northern's proposal would allow multiple shippers to consolidate storage, and not transportation, agreements.

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[4] The Commission's Rules of Practice and Procedure do not permit answers to either protest or answers (18 C.F.R. § 385.213(a) (2003)). However, the Commission finds good cause to accept Northern's answer, as it will assist the Commission in understanding the issues raised and will ensure a more complete record.

[5] VPEM cites Northern Natural Gas Company, 102 FERC ¶ 61,171 (2003); Great Lakes Gas Transmission Limited Partnership, 102 FERC ¶ 61,079 (2003); MIGC, Inc., 103 FERC ¶ 61,098 (2003); and, Columbia Gas Transmission Corporation, 104 FERC ¶ 61,236 (2003).

10. VPEM submits that Northern should revise its tariff to ensure that: (1) Northern's and the FDD shippers' rights and obligations under the consolidated agreement equals their collective rights and obligations under the individual service agreements; and, (2) any consolidation would not affect Northern's ability to provide firm service to firm shippers. VPEM adds that Northern should also specify its right to advise shippers under previously combined service agreements that separate nominations are required, with such nominations subject to separate allocations, if Northern determines in good faith that such separation is necessary to ensure that the rates, terms, and conditions applicable to each underlying component contract are distinctly maintained.

11. VPEM declares that Northern's tariff language is impermissibly vague, and fails to address many issues likely to arise, such as how Northern would initially consolidate contracts, specifics regarding the noticing process, the disposition of remaining storage inventory, and who would pay any rollover charge. VPEM asserts that, to mitigate shipper concerns, any consolidation should become effective as of the first day of the withdrawal season.

12. NMDG/MRGTF generally supports Northern's proposal, but has several concerns regarding its implementation. First, NMDG/MRGTF submits that the following proposed provision is too broad: "By participating in this arrangement, Shipper recognizes that it is waiving certain rights it may have pursuant to Northern's Tariff, including, but not limited to, the right to nominate under its individual FDD Service Agreements." NMDG/MRGTF asserts that Northern should specifically identify and state any tariff rights waived by shippers.

13. Northern proposes the following provision in section G of Rate Schedule FDD: "A Shipper must provide written notice to Northern thirty (30) days prior to the injection season to discontinue its participation in such Agreement or to reinstate participation." NMDG/MRGTF questions why, in order to reactivate an FDD Service Agreement under a consolidated agreement or reinstate a consolidated FDD agreement, a shipper must provide 30 days notice prior to the start of the injection season. NMDG/MRGTF asserts that circumstances may occur during the season that would cause a shipper to want to withdraw from a consolidated FDD agreement. It suggests that Northern revise its tariff to require that a shipper notify Northern of any intent to withdraw from, reinstate, or participate in, a consolidated FDD agreement within five business days of the beginning of the month following the notice.

14. NMDG/MRGTF observes that Northern's proposed tariff language references reinstatement, but does not state when the original consolidated FDD agreement becomes valid, and submits that any such agreements may become valid at any time after execution whether before, during, or after the injection season.

15. NMDG/MRGTF has concerns regarding the following language Northern proposes to include in section G of Rate Schedule FDD: "Nothing herein relieves Shipper of its obligation under the respective FDD Service Agreements, including, but not limited to, balancing and paying invoices as principals under the FDD Service Agreements." According to NMDG/MRGTF, Northern does not specify how it would determine a specific shipper's imbalance in the event the agent of the consolidated FDD agreement cannot determine a shipper's stored gas quantity (i.e., whether Northern would use the imbalance for the particular shipper as determined under the consolidated FDD agreement or whether it would attempt to "recreate" the imbalance that would have occurred if there had been no FDD consolidation).

16. NMDG/MRGTF also contends that Northern's proposed language stating that a shipper remains liable for payment of its invoices raises a host of questions, including: (1) if the agent fails to pay on time after receiving the invoice, what notice Northern requires of the participating shipper; and, (2) how many days does that shipper have to pay the invoice without penalty. Finally, NMDG/MRGTF proposes five additional minor clarifications to Northern's proposed pro forma FDD Consolidation Agreement.

17. The Coalition states that Northern fails to explain the consequences of consolidation of multiple FDD agreements held by different shippers into one operating agreement where the individual agreements have different terms (i.e., receipt or delivery points, rates, etc.). Additionally, the Coalition expresses concerns that Northern neglects to address how it will handle the ratcheting of various FDD contracts once they are consolidated. Finally, the Coalition contends that Northern has not indicated the costs associated with providing this service, noting that computer and operational changes will likely result in additional costs to Northern and/or shippers.

B. Transfer Balances between Storage Accounts

18. Parties raise numerous concerns and questions regarding Northern's proposal to allow shippers to transfer balances between storage accounts. VPEM explains that, under Northern's Gas-in-Place option, an FDD shipper's right to withdraw is tied to its level of storage inventory. For example, a shipper having an inventory greater than 75 percent of their contract volume has a higher right to withdraw than a shipper whose inventory is between 25 and 75 percent. Shippers with inventory below 25 percent of their contract volume have the lowest withdrawal priority. VPEM expresses concerns that shippers could consolidate FDD contracts so that the consolidated contract provides a greater withdrawal right than that of an individual contract. Other than affecting shippers' rights, VPEM contends that, in the worst case scenario, this may cause system operating difficulties resulting in curtailment of FDD service or interruptions to IDD service.

19. VPEM also expresses concerns that shippers may transfer an IDD balance to an FDD balance, essentially "firming" up IDD service, allowing the FDD-cum-IDD shipper

to leap over fellow IDD shippers in queue for withdrawal capacity. VPEM calls such action unfair, unjust, and unreasonable. VPEM asserts that, at a minimum, the Commission should allow no transfers that would increase Northern's firm obligations.

20. NMDG/MRGTF notes that section 2 of Northern's Rate Schedule FDD provides specific injection and withdrawal limitations, and expresses concerns that shippers could employ this transfer mechanism to sidestep conforming to those limitations.

C. <u>Northern's Answer</u>

21. Northern filed an answer to comments and protests on May 11, 2004. In general, with regard to Northern's proposal to allow shippers to consolidate FDD agreements, Northern argues that: (1) its proposal is in the public interest and would provide Northern and its shippers with increased administrative efficiency; (2) all FDD service agreements must have the same storage option (e.g., Gas-in-Place, 3-Step, or 4-Step) before consolidation; (3) consolidating FDD agreements causes only de minimus changes to shippers' injection or withdrawal rights; (4) allowing a shipper to discontinue a consolidated agreement at any time is a potential disruption to the process; and (5) its proposal causes no cost impact since it requires no computer changes or staffing additions.

22. With regard to Northern's proposal to allow shippers to transfer account balances between Rate Schedules FDD, IDD, and PDD, Northern maintains that: (1) its proposal will increase shipper flexibility and aid in imbalance management; (2) FDD shippers currently transfer balances from one FDD account to another; (3) shippers transfer imbalances between accounts by nominating withdrawals from one account with injections into another; and (4) its tariff language already limits a shipper's ability to transfer account balances "to the extent allowed by the parameters" of each account.

23. In its answer, Northern also addresses certain shipper questions, agrees to certain suggested tariff revisions, and does not agree to others. Finally, Northern opposes the Commission convening a technical conference for its proposal as being unnecessary.

IV. <u>Motion to Consolidate</u>

24. The Coalition includes with its protest a motion to consolidate Northern's instant proposal with its ongoing rate proceeding in Docket Nos. RP03-398-000 and RP04-155-000. The Coalition argues that Northern's proposal is best suited for discussion in the rate proceeding, where Northern's FDD and IDD storage services, system reliability, and storage capabilities are already at issue. The Coalition adds that consolidation would avoid duplication, conserve resources, and achieve administrative efficiency.

25. We reject the Coalition's motion to consolidate. Northern proposes discrete changes to the terms and conditions of certain rate schedules with no changes to its revenues or its cost-of-service. Since Northern's proposal should have no appreciable rate impact, we will not include it in Northern's rate proceeding. We agree, however, with the Coalition's alternative recommendation to convene a technical conference so parties can further discuss this proposal.

V. Suspension and Technical Conference

26. Although Northern attempted to address many shippers' concerns in its answer, based on a review of the filing and pleadings, the Commission finds that Northern has not shown its proposal to be just and reasonable, and it may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions in this order. Additionally, based on the numerous remaining concerns and questions surrounding this proposal, the Commission directs staff to convene a technical conference to further explore Northern's proposal.

27. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[6] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[7] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sheets for the maximum period and permit the rates to take effect on the earlier of October 24, 2004, or the date specified in a future order in this proceeding, subject to the conditions set forth in the body of this order and the outcome of the technical conference established herein.

The Commission orders:

(A) We conditionally accept and suspend Northern's tariff sheets, to become effective the earlier of October 24, 2004, or on the date the Commission specifies in any future order issued in this proceeding.

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[6] See Great Lakes Gas Transmission Company, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[7] See Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) We direct Commission staff to convene a technical conference to further investigate Northern's proposal, as discussed above. Staff must report to the Commission on the technical conference within 120 days of the date this order issues.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.